IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9667 OF 2004

Rukmani Krishna Turbhekar,.... .. Petitioner

_ Vs

1. Peermohammed Chand Shaikh and anr Respondents

Mr S.A.Bhagwat, for the petitioner.

CORAM : D.B.BHOSALE,J.

DATE : 14th December, 2004.

PC:

1. This petition is directed against the order dated 20.11.2004 by which the application filed by the respondents-defendants seeking amendment of the written statement has been allowed on payment of cost of Rs.500/- to be paid to the petitioner-plaintiff.

2. I heard the learned counsel for the petitioner and with his assistance perused the written statement and in particular paragraph 4 thereof as also Schedule of amendment and the impugned order. In the written statement, the defendants have stated that they had tendered a rent to the plaintiff but he refused to accept and that they are not in arrears of rent. By way of the amendment, he sought to contend that since the

suit premises is situated on the government land, the Government, by notice dated 22.7.1996, called upon the respondents-defendants to pay arrears of monthly rent and/or charges to the State of Maharashtra which they paid as per the demand in 1996. Mr Bhagwat, learned counsel for the petitioner, submits that by allowing the amendment, the defendants seek to introduce entirely new case. In support of his contention, he placed reliance upon the judgment of the Apex Court in **Modi Spinning and Weaving Mills Co Ltd Vs M/s Ladha Ram and Co, AIR 1977 SC 680**. It is well settled that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement. The courts are expected to be most generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. From perusal of the amendment, I am satisfied that it does not cause any injustice to the petitioner and it does not amount to withdrawal of any admission made in favour of the petitioner-plaintiff. Considering the peculiar facts and circumstances of the case, in my opinion, the judgment in M/s Modi Spinning and Weaving Mills Co Ltd case (supra) will not help the petitioner. I find no reason to exercise extremely limited jurisdiction of this Court under Article 227 of the

Constitution of India to interfere with the order impugned in the instant writ petition. The writ petition, therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)